

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

EBB TIDE PROCESSING, INC.

and

Case 19--CA--16228

ALASKA FISHERMEN'S UNION, AFFILIATED WITH
SEAFARERS' INTERNATIONAL UNION OF NORTH
AMERICA, AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union 19 October 1983, the General Counsel of the National Labor Relations Board issued a complaint 23 November 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 9 January 1984 the General Counsel filed a Motion for Summary Judgment. On 19 January 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that, unless an answer is filed within 10 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated 13 December 1983, followed by a phone call made 21 December 1983 and telegram sent 27 December 1983, notified the Company that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.¹

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a Washington corporation, is engaged in the business of canning and smoking fish at its facility in Anacortes, Washington, where it annually sells or ships goods or provides services valued in excess of \$50,000 to customers located outside the State of Washington, or to customers within the State of Washington who are directly engaged in interstate commerce. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

II. Alleged Unfair Labor Practices

About 28 September 1976 the Union was certified as the exclusive bargaining representative of the Company's employees in the following appropriate unit:

All employees of [the Employer] employed in its Anacortes plant, but excluding office clerical workers, guards and supervisors as defined in the Act.

At all times since 28 September 1976 the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive bargaining representative of employees in the unit for the purposes of collective bargaining.

About 31 August 1983 the Union and the Company reached full and complete agreement with respect to terms and conditions of employment of unit employees. The agreement was to be incorporated in a collective-bargaining agreement between the Union and the Company and to be retroactively effective from 15 July 1983 through 15 July 1984. Since about 7 October 1983 the Union has requested, and the Company has failed and refused, to execute a written contract embodying the terms and conditions of said agreement. We find that the Company has violated Section 8(a)(5) and (1) of the Act by failing and refusing to reduce to writing and execute the collective-bargaining agreement agreed upon by the parties about 31 August 1983.

Conclusions of Law

By failing and refusing to reduce to writing and execute the collective-bargaining agreement reached by the parties about 31 August 1983, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in an unfair labor practice, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent will be directed to reduce to writing and execute the collective-bargaining agreement, on the Union's request, and to bargain with the Union as the exclusive representative of the employees in the unit described below. We shall direct the Respondent to comply with the contract retroactively to its effective date, and to make whole any employees who may have sustained monetary losses, with backpay to be computed in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest thereon as set forth in Florida Steel Corp., 231 NLRB 651 (1977).²

ORDER

The National Labor Relations Board orders that the Respondent, Ebb Tide Processing, Inc., Anacortes, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Union by failing and refusing to reduce to writing and sign a collective-bargaining agreement reached by the parties about 21 August 1983.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

² See generally Isis Plumbing Co., 138 NLRB 716 (1962).

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request of the Union, reduce to writing, sign, and give retroactive effect to the collective-bargaining agreement agreed upon by the parties about 31 August 1983, and make whole any employees covered by the contract for any monetary losses they may have suffered as a result of the Respondent's refusal to reduce to writing and sign the contract in the manner set forth in the remedy section of the Decision and Order.

(b) On request, bargain with the Union as the exclusive representative of all the employees in the following unit:

All employees of the Employer employed in its Anacortes plant, but excluding office clerical workers, guards and supervisors as defined by the Act.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, personnel records and reports and all other records necessary to analyze the amount of compensation due under the terms of this Order.

(d) Post at its facility in Anacortes, Washington, copies of the attached notice marked "'Appendix.'"³ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

19 April 1984

Donald L. Dotson,

Chairman

Don A. Zimmerman,

Member

Robert P. Hunter,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the Alaska Fishermen's Union, affiliated with Seafarers' Union of North America, AFL--CIO, by failing and refusing, on request, to reduce to writing and to sign a collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request of the Union, reduce to writing, execute, and give retro-active effect to the collective-bargaining agreement reached about 31 August 1983 and WE WILL compensate any employees covered by the contract for any monetary losses they may have sustained as a result of our refusal to reduce to writing and sign the contract.

WE WILL, on request of the Union, bargain with the Union as the exclusive representative of the employees in the following unit:

All employees of the Employer employed in its Anacortes plant but excluding office clerical workers, guards and supervisors as defined by the Act.

EBB TIDE PROCESSING, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 2948, 915 Second Avenue, Seattle, Washington 98174, Telephone 206--442--7472.